Ala. 639; *Andrews & Bros.* v. *McCoy* (1846) 8 Ala. 920. The latter, strangely, held it was. *Grant* v. *Kidwell* (1860) 30 Mo. 455. The real question in the *Coddington* case, *supra,* was of contingent liability but the case has always been cited as the leading one on the general former New York rule. Under the Negotiable Instruments Law there is no distinction between an antecedent debt and a previously assumed contingent liability. In keeping with the justifications for the federal rule it seems sufficient if the transferor can render it advantageous to the transferee to have security for the transferor's performance. The instant case, hence, correctly held such transfer to be for value. See *First Nat. Bank, etc.* v. *Busch* (1907) 102 Minn. 365, 366, 113 N. W. 898.

SPECIFIC PERFORMANCE—ACCRUAL OF ACTION.—The defendant vendor repudiated an executory contract for the sale of land. Before the time for performance a bill for specific performance was brought. *Held, inter alia,* the action was not premature. *Long et al.* v. *Wright* (Colo. 1921) 197 Pac. 1016.

A contract for the sale and conveyance of land is of the class for which specific performance is habitually granted. Pomeroy, *Specific Performance of Contracts* (2d ed. 1897) § 10. It is well settled that where there has been repudiation of an executory contract before maturity, a right of action at law accrues immediately. *Roehm* v. *Horst* (1899) 178 U. S. 1, 20 Sup. Ct. 780. This is predicated on the undertaking implied in every executory contract that the contractual relation will be maintained until execution. See *Roehm* v. *Horst, supra,* 19. There seems no sound reason why in a proper case the action allowed should be restricted to a suit at law for damages. Moreover, the objection to an action for anticipatory breach, that the damages are purely conjectural, vanishes in the case of an action for specific performance where damages are not sought. Also, the vendee's waiting until maturity to bring suit might be construed by a court of equity as an acquiescence in the repudiation and an abandonment. See *Miller* v. *Jones* (1911) 68 W. Va. 526, 527, 71 S. E. 248. The decision in the instant case is consonant both with good reason and the great weight of authority. *Corney* v. *Kline Bldg. & Const. Co.* (1920) 191 App. Div. 793, 182 N. Y. Supp. 15; *Stein* v. *Francis* (1919) 91 N. J. Eq. 205, 109 Atl. 737; *contra, Friedman & Loveman* v. *McAdory* (1887) 85 Ala. 61, 4 So. 835. But equity, in its purpose to be fair to both parties, will follow the exact terms of the contract, and conveyance of the land will not be compelled before the date set therein. *Crosby* v. *Realty Co.* (1912) 138 Ga. 746, 76 S. E. 38. Nevertheless by the *lis pendens* the plaintiff is protected against a sale to an innocent purchaser for value.

STATUTE OF LIMITATIONS—CONCEALMENT OF CAUSE OF ACTION.—The plaintiff's brother deposited money for her in a bank and later drew it out and converted it to his own use. The plaintiff did not discover the conversion until after her brother's death. In a suit against his estate, the defendant pleaded the Statute of Limitations. *Held,* under the Vermont Statute, that the concealment of the cause of action prevented the Statute from running. *Watts* v. *Mulliken's Estate* (Vt. 1921) 115 Atl. 150.

In most states, by statute, the concealment of a cause of action by the defendant prevents the Statute from running. Where by fraud or other concealment the defendant prevents the plaintiff from learning of a cause of action, the Statute does not begin to run until the cause of action is discovered. *Board of Supervisors* v. *Corliss* (1920) 209 Mich. 487, 177 N. W. 232. This does not apply where the plaintiff, having been put on notice, is not diligent in discovering the cause of action. *Gulf Production Co.* v. *Palmer* (Tex. Civ. App. 1921) 230 S. W. 1017. However, if a relationship between the parties gives the plaintiff

a right to rely on the other, any concealment is a bar to the Statute. *Cress* v. *Ivens* (1912) 155 Iowa 17, 134 N. W. 869. In such a case silence is regarded as concealment. See *Caffee* v. *Berkley* (1909) 141 Iowa 344, 349, 118 N. W. 267. Otherwise it generally is not. *Short* v. *Estate of Jacobus* (1918) 212 Ill. App. 77. An act of concealment may be coincident in time with the act complained of. *Athey* v. *Hunter* (1895) 65 Ill. App. 453. It may be the same act. See *Shuck* v. *Bramble* (1914) 122 Md. 411, 414, 89 Atl. 719. And if the effect of the act sued for is to conceal the cause of action the Statute does not operate until the cause of action is discovered. See *Dean* v. *Dean* (Tex. Civ. App. 1919) 214 S. W. 505, 509. The instant case interprets the Statute to mean that any failure to discover a cause of action which the defendant intended to conceal bars the Statute. This seems opposed to the general interpretation of similar Statutes.

SURETYSHIP—BOND TO SECURE JUDGMENT—EFFECT OF AMENDING COMPLAINT.—The plaintiff was suing X for $23,400. Defendant company entered a bond undertaking, in the sum of $24,000, that X would pay any judgment obtained against him. The plaintiff subsequently amended his complaint, but without changing his cause of action, to ask $30,000 in damages, and recovered a judgment for that sum. *Held,* defendant is not discharged and is liable for the amount of $24,000. *Turner* v. *Fidelity & Deposit Co. of Maryland* (Cal. 1921) 200 Pac. 959.

A surety on a bond, conditioned on the payment of whatever judgment is recovered in a pending action, is discharged if the plaintiff changes the form of action. *Michelin Tire Co.* v. *Bentel* (Cal. 1920) 193 Pac. 770. This discharge is given on contractual grounds, for the change either causes a failure of consideration or prevents the condition precedent to the surety's liability from happening. But a discharge because of an increase in the damages asked must rest on the equitable ground that any increase in the surety's risk will discharge. *Cf. Holme* v. *Brunskill* (1877) L. R. 3 Q. B. D. 495. A mere increase in the *ad damnum* clause does not discharge the surety. *Bierce* v. *Waterhouse* (1911) 219 U. S. 320, 334, 31 Sup. Ct. 241; *cf. Warren Bros.* v. *Kendrick* (1910) 113 Md. 603, 77 Atl. 847; but *cf. Ruggles* v. *Berry* (1884) 76 Me. 262. The theory of these cases is that the surety contemplates an increase up to the amount named in the bond. See *Bierce* v. *Waterhouse, supra,* 334. Since the penal sum is usually twice the judgment asked and the premium is charged on the basis of this amount, this reasoning is correct, if there is no increase beyond the penal amount, for in such a case the surety is being compensated for the increased risk. But this reasoning does not apply to the instant case. Here the penal sum named was approximately the same as the judgment asked. The possibility of the debtor's default in the payment of the larger judgment is greater than originally. Hence the surety's risk is increased. On equitable grounds, therefore, he should be discharged.

TENANCY IN COMMON—ACCOUNTING OF PROFITS DERIVED FROM ILLEGAL USE OF PROPERTY.—Without the plaintiff's consent, the defendant leased for immoral use property which the plaintiff and defendant owned as tenants in common. To a petition for an accounting of rents and profits the defense contended that to compel an accounting of profits so derived would be to enforce an illegal transaction. *Held,* the plaintiff not being a party to the illegal transaction was entitled to an accounting. *Daniel* v. *Daniel* (Wash. 1921) 198 Pac. 728.

Courts generally will not enforce illegal or immoral transactions. *Reed* v. *Johnson* (1901) 27 Wash. 42, 67 Pac. 381; *McDonnell* v. *Rigney* (1896) 108 Mich. 276, 66 N. W. 52. Nor will they reimburse one who for another expended money for illegal or immoral purposes. *Smith* v. *Crockett Co.* (1912) 85 Conn. 282, 82